

**IN THE HIGH COURT OF UTTARANCHAL AT NAINITAL**

Chapter VIII, Rule 32(2) (b)  
Description of case

**Special Appeal No. 2 of 2002**  
**And**  
**Writ Petition No. 3308 of 2001 (S/S)**

Date of decision: 8<sup>th</sup> August, 2006

A.F.R. (Approved for Reporting)

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~~Not Approved for Reporting~~

Date 8.8.2006

Initials of Judge

Note: Bench Reader will attach this at the top of first page of the judgment when it is put up before the Judge for signature.

**THE HIGH COURT OF UTTARANCHAL AT NAINITAL**

**Special Appeal No. 02 of 2002**

U.P. Jal Nigam through Project Manager,  
Ganga Pollution Control Unit, Haridwar ..... Appellant

Versus

Ramesh Chaukiyal s/o Sri R.K. Chaukiyal,  
R/o 6-A, Vishnu Garden, P.O. Gurukul Kangri,  
Haridwar ..... Respondent

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**AND**

**Writ Petition No. 3308 of 2001 (S/S)**

Ramesh Chaukiyal s/o Sri R.K. Chaukiyal,  
R/o 6-A, Vishnu Garden, Post Off. Gurukul Kangri,  
Haridwar ..... Petitioner

Versus

1. State of Uttaranchal through  
Secretary Jal Nigam, Dehradun
2. Chairman Jal Nigam, U.P./Uttaranchal  
6 Rana Pratap Marg, Lucknow.
3. Chief Engineer Jal Nigam 11 Mohini Road,  
Dehradun
4. General Manager, Ganga Pollution Control Unit,  
Srinagar Garhwal, District Pauri Garhwal
5. Project Manager, Ganga Pollution Control Unit,  
Uttaranchal Jal Nigam, Haridwar ..... Respondents

Sri D.S. Patni, Advocate for U.P. Jal Nigam and others.  
Sri N.S. Negi for respondent/petitioner Ramesh Chaukiyal  
Sri N.C. Gupta, Standing Counsel for the State of Uttaranchal.

**JUDGMENT**

**Coram: Hon'ble Rajeev Gupta, C.J.  
Hon'ble P.C. Pant, J.**

**RAJEEV GUPTA, C. J. (Oral)**

Sri D.S. Patni, Advocate for U.P. Jal Nigam and others.  
Sri N.S. Negi for respondent/petitioner Ramesh Chaukiyal  
Sri N.C. Gupta, Standing Counsel for the State of Uttaranchal.

2. On due consideration, the Delay Condonation Application is allowed and the delay in filing the appeal is hereby condoned.

3. The appeal is admitted for hearing.

4. As the Special Appeal has been filed against an interim order passed in the writ Petition, we directed listing of Special Appeal and the Writ Petition for hearing vide order dated 04.08.2006.

5. The learned counsel for the parties are heard.

6. The appellants have filed this Special Appeal against the interim order dated 11.07.2001 passed in Writ Petition No. 3308 of 2001 (S/S), whereby the learned Single Judge has directed the respondents to consider the case of petitioner Ramesh Chaukiyal for regularisation on the post of Draftsman and to pay him regular salary as is being paid to other employees working on the same post.

7. Petitioner Ramesh Chaukiyal filed the writ petition for the following reliefs:

- “A. Issue a writ, order or direction in the nature of mandamus directing the respondents not to interfere in the working of the petitioner on the post of Draftsman.
- B. Issue a writ, order or direction in the nature of mandamus directing the respondents to regularise the services of the petitioner on the post of Draftsman with effect from Sept. 1992 i.e. from the date when the petitioner was working on the said post.
- C. Issue a writ, order or direction in the nature of mandamus directing the respondent to pay the regular salary to the petitioner as is being paid to the counter part of the petitioner who are working on the same post on regular basis.
- D. Issue any suitable writ, order or direction in the nature of which this Hon’ble Court may deem fit and proper in the circumstances of the case.
- E. Award the cost of the writ petition to the petitioner.”

8. The petitioner was appointed as Work Agent on 12.03.1986 on daily wages. The petitioner's case is that the respondents in the writ petition have been taking the work of Draftsman from him since 1992. The petitioner, on the above plea, is seeking a direction to the respondents to regularise him on the post of Draftsman and to pay him the salary of Draftsman.

9. The respondents in their counter affidavit have denied that work of Draftsman was ever taken from petitioner Ramesh Chukiya. It is their specific case in the counter affidavit that petitioner Ramesh Chaukiyal was appointed as Work Agent on 12.03.1986 and thereafter as Pump Operator w.e.f. 01.02.1995 and since then he is working as Pump Operator and is being paid the salary of Pump Operator. The respondents' case further is that on account of the impugned interim order dated 11.07.2001 and on account of the orders passed in the contempt proceedings, the petitioner now is being paid the salary of Draftsman since 11.07.2001.

10. Admittedly, petitioner Ramesh Chaukiyal was appointed as Work Agent on 12.03.1986 and thereafter as Pump Operator since 01.02.1995. The petitioner has not placed on record any such order appointing him on the post of Draftsman. The petitioner's averment that the respondents are taking work of Draftsman from him since 1992 has been categorically denied by the respondents in their counter affidavit.

11. As the petitioner was never appointed on the post of Draftsman, no direction can be issued to the respondents to consider the petitioner's case for regularisation on the post of Draftsman. In the absence of petitioner's appointment as Draftsman, the petitioner is not entitled to get the salary of the post of Draftsman.

12. In this view of the matter, the reliefs sought by the petitioner in the writ petition cannot be granted and the writ petition is liable to be dismissed. The writ petition, therefore, is dismissed.

13. The incidental question which arises for consideration is as to whether the respondents should be permitted to recover the difference of the salary which the petitioner was entitled to get for the post of Pump Operator and the salary which was paid to him for the post of Draftsman in compliance of the impugned interim order dated 11.07.2001. In view of the peculiar facts and circumstances of the case, we deem it proper to direct that the difference amount shall not be recovered from the petitioner. We, however, make it clear that now onwards, the petitioner will be entitled to get the salary for the post of Pump Operator only and not for the post of Draftsman as he has been receiving upto now in view of the interim order dated 11.07.2001.

14. As we have dismissed the writ petition filed by the petitioner, the impugned interim order dated 11.07.2001 is liable to be set aside and the same is hereby set aside.

15. With the above order Special Appeal No. 2 of 2002 stands allowed and the Writ Petition No.3308 of 2001 stands dismissed. No order as to costs.

**(P.C. Pant, J.)**  
08.08.2006

**(Rajeev Gupta, C. J.)**  
08.08.2006

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